

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

January 23, 2012

Ronald J. Schafer
Ionia County Prosecuting Attorney
Courthouse
100 Main Street
Ionia, Michigan 48846

RE: Ineffective Assistance of Trial Counsel Claims

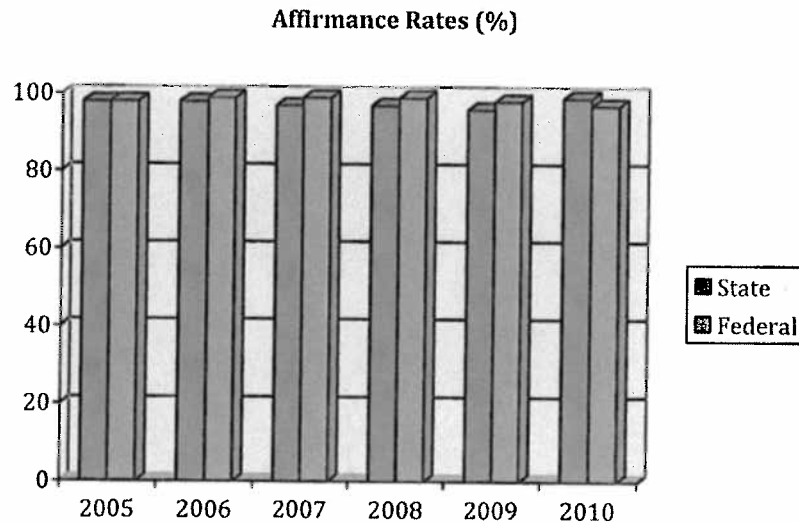
Dear Prosecutor Schafer:

Below are the Appellate Division's preliminary observations regarding how often ineffective assistance of trial counsel (IATC) is a basis for reversing state court convictions on state court appellate review or on collateral habeas corpus review in federal court. Approximately six years of data show that reversals for any reason are rare, and that the percentage of reversals based on IATC is very small. Equally important, when relief is granted for IATC, it is more likely due to the actions of *retained* counsel rather than appointed counsel.

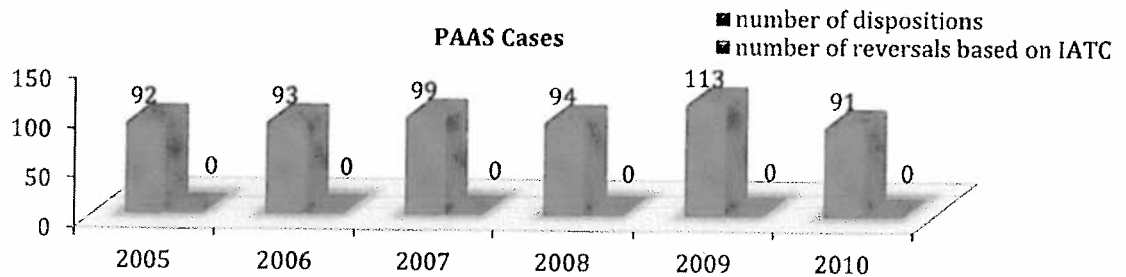
As background, the Michigan Department of Attorney General–Appellate Division represents the 56 smallest Michigan counties in their direct criminal appeals in the Michigan Court of Appeals and the Michigan Supreme Court through the Prosecuting Attorney Appellate Service (PAAS). The Appellate Division also represents the state's prison wardens in federal habeas corpus litigation. In these cases, prisoners in the custody of the Michigan Department of Corrections challenge in federal district court the constitutionality of their underlying state court criminal convictions.

Six years of data show that state courts are not reversing convictions in significant numbers for PAAS counties, nor are federal courts granting habeas relief on collateral review in significant numbers. For purposes of the following chart, a state court "affirmance" includes any case neither requiring retrial nor barring reprosecution. Federal habeas "affirmance" includes any case reaching final disposition in the federal courts where there was no grant of habeas relief, and this

information does not include the significant number of cases dismissed through the federal court prescreening process, which occurs before the Division's involvement. If the Division had such data, the "affirmance" rate would be higher still.



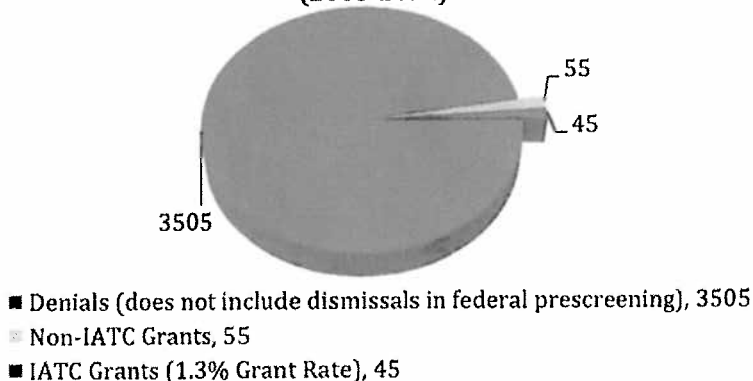
Turning to IATC-specific reversals, six years of data show that *there was not a single reversal based on IATC* out of 582 dispositions for PAAS counties from 2005-2010:



Although there are grants of federal habeas relief, in the context of the total number of dispositions, the numbers are very small for all types of claims. For IATC claims, specifically, these numbers and percentages are even smaller.

For habeas cases in federal district court, there were only 45 habeas grants based on IATC (1.3% grant rate) in comparison to 3,505 denials from 2005 through 2011:

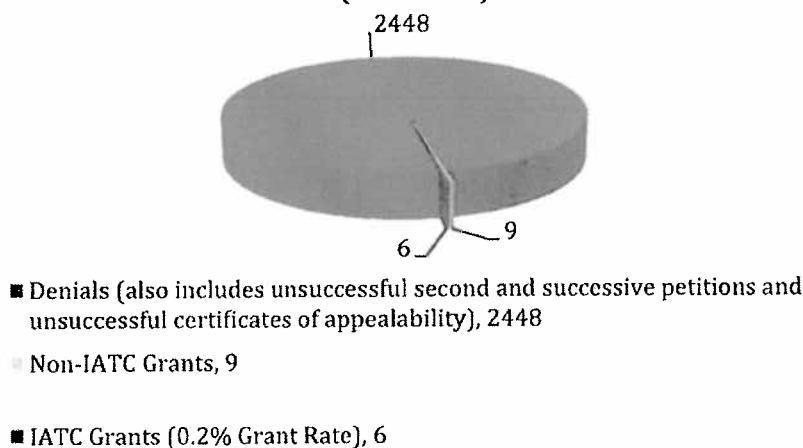
**Total Number of Federal District Court Denials vs Grants
(2005-2011)**



Only four judges in the Eastern District of Michigan account for 61% of all IATC habeas grants. If those judges granted IATC habeas petitions at an average rate, the overall IATC habeas grant rate would be well under 1%.

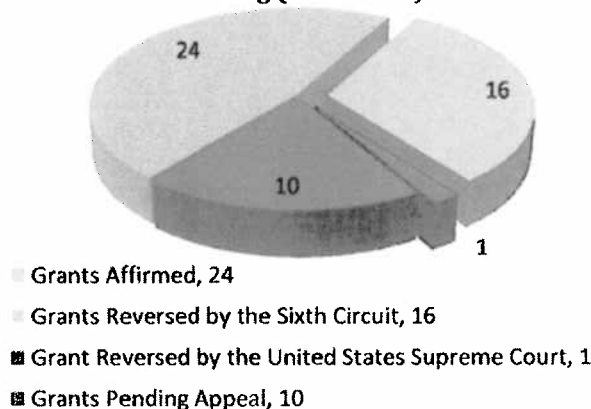
For habeas cases reaching a disposition in the Sixth Circuit, there were only 6 grants based on IATC (0.2% grant rate) in comparison to 2,448 denials from 2005 through 2011:

**Total Number of Sixth Circuit Denials vs Grants
(2005-2011)**



Of the 51 IATC habeas grants (federal district court and Sixth Circuit combined), only 24 grants were upheld, 17 grants were reversed, and 10 remain pending:

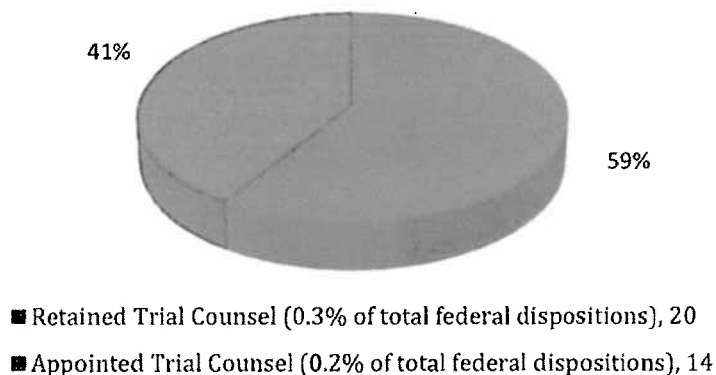
Disposition of IATC Grants -- Affirmed, Reversed, or Pending (2005-2011)



The Division has challenged 54 habeas grants (based on all types of claims) in cases that reached disposition since 2005, obtaining reversals for 33; this represents a 61% reversal rate. Based on this rate, the Division expects reversals in several of the 10 IATC grants now pending. Indeed, in the last two years, the Division has had success in the United States Supreme Court, winning three reversals of five habeas grants (the other two remain pending).

Moreover, the statistics show that the majority of federal habeas IATC grants involve the actions of retained counsel, not appointed counsel, i.e., 59% of the time the habeas grant based on IATC was due to the actions of *retained* counsel:

**Percentage of Successful/Pending Habeas Grants
-- Appointed vs Retained Trial Counsel
(2005-2011)**

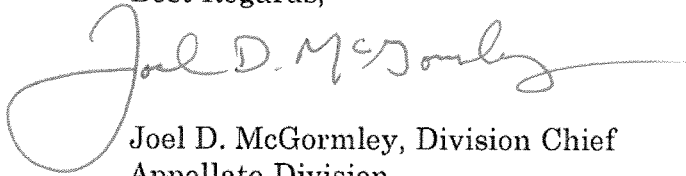


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In conclusion, (1) there have been no reversals based on IATC out of 582 dispositions for PAAS counties from 2005-2010; (2) the grant rate for federal habeas petitions in district court based on IATC was only 1.3% from 2005 through 2011, not accounting for the reversals of some of these decisions; and (3) more often than not from 2005 through 2011, federal habeas relief based on an IATC claim involved *retained* counsel rather than appointed counsel, where relief based on IATC of appointed counsel occurs in only 0.2% of all habeas dispositions.

Thank you for your inquiry about the Appellate Division's statistics regarding IATC claims. Please let me know if you have any additional questions.

Best Regards,

A handwritten signature in dark ink, reading "Joel D. McGormley". The signature is fluid and cursive, with a large initial "J" and a long horizontal flourish extending to the right.

Joel D. McGormley, Division Chief
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